

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: Illinois

ELIGIBILITY CONDITIONS AND REQUIREMENTS

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Enforcement of Compliance for Nursing Facilities

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Temporary Management: Describe the criteria (as required at §1919(h)(2)(A)) for applying the remedy.

       Specified Remedy

(Will use the criteria and notice requirements specified in the regulation.)

  X   Alternative Remedy

(Describe the criteria and demonstrate that the alternative remedy is as effective in deterring non-compliance. Notice requirements are as specified in the regulations.)

Imposition of a monitor/receivership authority. The State has the authority to immediately place a monitor in the facility to evaluate conditions in the home and the facility's correction of the noted deficiencies. In addition, the State can appoint a receiver to assume responsibility for the operation of the facility.

These provisions are imposed as an alternative to the requirements for the appointment of a temporary manager. We believe that the unilateral placement by a State agency of a temporary manager in a facility with absolute control over facility operations will face immediate, concerted due process challenges in Illinois. If concerns in a facility warrant such serious intervention, other remedies are available that can more quickly and effectively address the problems and, at the same time, avoid the delays involved in legal confrontation. Two existing State remedies can be effectively used as an alternative to temporary management: monitors and receivers.

In a situation warranting the placement of a temporary manager under federal regulations, the State can place a monitor to assess the condition of a facility and to assure the protection of residents' health and safety. Under State law, DPH may place a monitor in a facility without the need for a court order. State law also permits DPH to transfer or discharge residents where conditions have deteriorated to a serious level; a situation a monitor could quickly assess.

State law also permits the State to initiate proceedings to place a receiver in a facility in emergency circumstances. Emergencies include situations or physical conditions that create or probably will create an immediate danger of death or serious physical or mental harm to residents of a facility. This definition would encompass violations of federal law that constitute a serious and immediate threat to residents and, as such, comprises a broader definition of "emergency" than mandated under federal law.



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Under State law, an expedited hearing process allows receivers to be placed in a facility within five days of notice to a court. Once appointed, receivers remain under the jurisdiction of the court. Receivers are individuals or groups under contract with DPH qualified to provide day-to-day facility management services. Receivers have sole authority to operate a facility. They are specifically charged with providing for residents' continued safety, which, if circumstances warrant, may include transferring residents from a facility. A receivership can be terminated by a court if existing or new management can demonstrate the capability of bringing a facility into, and remaining in, compliance and guaranteeing resident safety.

A receiver will provide for greater control over the operation of a facility than temporary management. Unlike a temporary manager, who merely oversees existing managements's operations, a receiver assumes complete control of the operation of a facility. Existing management has no direction or control over the facility. Furthermore, since the receiver is appointed at the direction of a court, it has an uthority not subject to the legal challenge a temporary manager would face.

It should be emphasized that in a situation where immediate jeopardy to residents exists, DPH staff will closely monitor the situation and will remain onsite until the danger is removed or other means to protect residents, including relocation, are carried out. In addition, under State licensure law, DPH may impose conditions on a facility's license to protect the health and safety of residents.

Since State law provides for immediate coverage in most situations involving noncompliant homes through placement of a monitor and for a legally appointed receiver to actually control and direct all operations in more serious circumstances, the State believes these alternatives are superior to the temporary management provision.